

FILED WITH LRC TIME: <u>11am</u>
OCT 15 2010
<i>Emily B Caudill</i> REGULATIONS COMPILER

## STATEMENT OF CONSIDERATION RELATING TO

401 KAR 51:001. Definitions for 401 KAR Chapter 51.  
401 KAR 52:001. Definitions for 401 KAR Chapter 52.

Energy and Environment Cabinet  
Department for Environmental Protection  
Division for Air Quality

Amended After Comments

- (1) A public hearing on the above administrative regulations was held on August 24, 2010, at 2:00 p.m. in Conference Room 201B of the Division for Air Quality, 200 Fair Oaks Lane, Frankfort, Kentucky 40601.
- (2) The following people attended this public hearing or submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>	<u>Testimony</u>
Richard A. Schutt Chief, Air Planning Branch	U.S. Environmental Protection Agency (U.S. EPA)	Written
Lloyd R. Cress, Jr. Attorney at Law Dinsmore & Shohl LLP	Kentucky Association of Manufacturers	Written
Chad Harpole Director, Public Affairs	Kentucky Chamber of Commerce Energy and Environment Council	Written
	Legislative Research Commission (LRC)	Written
Rachael Hamilton Regulatory Specialist Michelle King Environmental Supervisor	Louisville Metro Air Pollution Control District (L.M.A.P.C.D.)	None
Stan Knaus Regulatory Compliance Specialist	LATA Environmental Services of Kentucky	None

- (3) The following people from the promulgating administrative body attended this public hearing:

Name and Title

Jim R. Eubank, Environmental Technologist I

Ty Martin, Environmental Technologist II

Lora Gowins, Environmental Control Supervisor

Elizabeth Robb, Internal Policy Analyst III

Sean Alteri, Assistant Director

John Lyons, Director

Lisa Jones, Staff Attorney I, Office of General Counsel, Environmental Protection Legal Division

John Horne, Director, Office of General Counsel, Environmental Protection Legal Division

\*Laura Lund, Environmental Technologist II

\* Agency Representative

## Summary of Comments and Responses

### (1) General Comment

- (a) **Comment** – We urge the Cabinet to express opposition to EPA's actions  
*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers (KAM)*  
*Chad Harpole, Kentucky Chamber of Commerce (Chamber)*

KAM urges the Cabinet to voice its displeasure with the regulation of greenhouse gases (GHGs) and the *Tailoring Rule* to U.S. EPA in the strongest terms possible. We request that the Cabinet support other states that have filed challenges to the rule by participating as *amicus curiae* in those suits. In addition, we requests that the Cabinet communicate with U.S. EPA in writing to express the Commonwealth's objection to the regulation of GHGs and U.S. EPA's tactics utilized in imposing these requirements on unwilling states.

The Chamber believes that EPA's actions to regulate GHGs under the Clean Air Act (CAA) are not supported by law and encourages the Cabinet and other Kentucky officials to aggressively express opposition to EPA's actions, including joining with other states in litigation challenging EPA's determinations and rulemakings.

### (b) Response

The Cabinet acknowledges this comment:

On September 27, 2010, the Commonwealth of Kentucky, through the Office of General Counsel for the Energy and Environment Cabinet, filed a notice of intent to participate as *amicus curiae* in support of the position of the State of Alabama, et. al., in the legal challenge petitioned by *Southeastern Legal Foundation, et. al. v. EPA* (Case No. 10-1131, Document 1268183). Additionally, the Cabinet submitted adverse comments in response to the proposed *Tailoring Rule* on December 18, 2009. In these comments, the Cabinet stressed the fact that EPA is circumventing the normal SIP process by which emissions of regulated NSR pollutants are regulated under the SIP. The Cabinet also encouraged EPA to seriously consider the programmatic and technical issues raised by the Commonwealth and other states concerning the deleterious effects the implementation of the Tailoring Rule will have on state permitting programs and the regulated community. The Cabinet also implored EPA to delay promulgation of the Tailoring Rule until after the proper legal groundwork has been established for regulating GHGs.

In a related matter, the Commonwealth of Kentucky's Attorney General petitioned for a motion to intervene against EPA, challenging the *Endangerment Finding*, on March 18, 2010 (Case No. 09-1322, Document 1235617).

**(2) General Comment**

- (a) Comment** – The Chamber supports a FIP in the short term  
*Chad Harpole, Kentucky Chamber of Commerce*

Although the Chamber disagrees with EPA's actions, the Chamber supports Kentucky's efforts to maintain its status as the permit issuing authority for Kentucky business.

The Chamber supports action by the Cabinet to obtain delegated authority under an EPA-issued FIP for implementation of greenhouse gas permitting without submittal of a SIP revision package in the short term.

**(b) Response**

The Cabinet acknowledges this comment and concurs in part. To maintain PSD program approval, the Cabinet intends to submit its SIP revision before January 2, 2011. In response to EPA's request in the preamble of the "Action To Ensure Authority To Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Findings of Substantial Inadequacy and SIP Call", the Cabinet submitted a letter on October 4, 2010, requesting a SIP submittal deadline of March 31, 2011, as a precautionary measure to avoid receiving a FIP (and possible sanctions) from EPA.

**(3) General Comment**

- (a) Comment** – The Cabinet must act to withdraw or repeal these regulation amendments if there are changes in the federal rule  
*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*  
*Chad Harpole, Kentucky Chamber of Commerce*

It is critical for the Cabinet to promptly act to repeal its adoption of the federal *Tailoring Rule* in the event of federal action resulting in elimination of greenhouse gas regulation and permitting under the Clean Air Act. If the Cabinet proceeds with a SIP revision, it should immediately withdraw the revision request if the federal regulation is significantly modified, stayed, eliminated, or vacated. Such action is in fact required by KRS 13A.120, which prohibits the Cabinet regulations from being more stringent than federal law or regulations.

**(b) Response**

The Cabinet concurs. In the event of a federal action that results in not regulating or permitting greenhouse gases prior to the effective date of these proposed administrative regulations, the Cabinet will withdraw these regulation amendments. If federal regulation is significantly modified, stayed, eliminated, or vacated after these proposed administrative

regulations become effective, the Cabinet will adhere to the Court's final decision and amend the regulations accordingly. The Cabinet concurs that KRS 13A.120(1)(a) restricts the stringency of administrative regulations as compared to federal regulations.

**(4) General Comment**

- (a) Comment** – The Cabinet and the Division for Air Quality should actively engage EPA regarding biomass combustion sources  
*Chad Harpole, Kentucky Chamber of Commerce*

The *Tailoring Rule* provides insufficient information on how permitting authorities should consider biomass combustion sources for purposes of greenhouse gas PSD/Title V permitting. The Chamber strongly urges the Cabinet and the Division for Air Quality to actively engage EPA on this issue and to pursue a policy that is beneficial to Kentucky's farmers and forest owners and Kentucky's future as a biomass industry leader.

**(b) Response**

The Cabinet acknowledges this comment. The Cabinet will continue to actively engage EPA through conference calls and comments submitted in response to future rulemaking.

**(5) General Comment**

- (a) Comment** – The Cabinet must be mindful of differences between state and federal implementation of regulatory programs  
*Chad Harpole, Kentucky Chamber of Commerce*

The Cabinet must be mindful that there are fundamental differences in the manner in which the federal government implements regulatory programs and the way Kentucky agencies must implement regulatory programs. The Cabinet is prohibited from regulating through unpromulgated policy or guidance by state law (KRS 13A.130). These distinctions must continue to be recognized as these regulations are used to implement the permitting program.

**(b) Response**

The Cabinet acknowledges this comment.

**(6) General Comment**

- (a) Comment** – The Cabinet should provide a date for federal regulations incorporated by reference  
*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*  
*Chad Harpole, Kentucky Chamber of Commerce*

For those definitions that the Cabinet proposes to change such that only the counterpart federal regulation is referenced, the Cabinet has not specified a date for the federal regulation incorporated by reference. The incorporation by reference of federal regulatory decisions into state regulations effectively transfers to U.S. EPA the authority to legislate for Kentucky and to determine, in the future, that conduct which would constitute a violation of state law. Such a delegation of state legislative authority is prohibited by Section 29 of the Kentucky Constitution. The Cabinet should include the date of the federal regulation being incorporated.

**(b) Response**

The Cabinet concurs in part. In response to this and other comments, the Cabinet has restored previous definition language for a majority of the terms defined in 401 KAR 51:001 and 52:001. The Cabinet does concur that for those definitions in the proposed amendments that continue to cite to federal definitions in the *Code of Federal Regulations* (CFR), it is appropriate to include the version of the CFR that is being cited. Therefore, the Cabinet has added a provision to the applicability section that identifies the version of the CFR that is being cited. The Cabinet does not concur that it is always necessary to include a version date in all administrative regulations for all definitions with federal citations (see KRS 13A.2261), nor that this practice transfers any authority to EPA.

**(7) General Comment**

- (a) Comment** – Amended definitions should not be cited to 40 C.F.R. Part 60.  
*Chad Harpole, Kentucky Chamber of Commerce*

The proposed changes to 401 KAR 52:001 incorporate definitions from 40 C.F.R. 60.2 in some instances – for example, in the definitions of “alternative method” and “equivalent method”. 40 C.F.R. Part 60 contains the federal new source performance standards (NSPS) and is not generally applicable to all emission units. Chapter 52 applies to all types of sources including sources that are not subject to any federal NSPS. Therefore, a federal NSPS definition should not be incorporated by reference. Similarly, the proposed changes to 401 KAR 51:001 incorporate definitions from 40 C.F.R. 60.2 in some instances – for example, in the definitions of “malfunction” and “modification”. 401 KAR Chapter 50, the chapter that governs the air program generally, already contains a regulation addressing malfunctions, 401 KAR 50:055, and a definition is provided in 401 KAR 50:010. Incorporation of the definitions of the federal NSPS program is not appropriate or necessary.

**(b) Response**

The Cabinet concurs in part. In response to this and other comments, the Cabinet has amended the proposed administrative regulations to restore the

previous definitions for the terms the commenter lists, with the exception of the term, "alternative method". For this term and others that contain discretionary language which cannot be resolved to meet KRS Chapter 13A drafting requirements, the Cabinet has continued to cite to the CFR. Additionally, the Cabinet has added a provision to the applicability section that identifies the version of the CFR that is being cited. Also, please see the Response to Comment (6).

**(8) General Comment**

**(a) Comment** – This proposed regulation of greenhouse gases is inappropriate  
*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*

U.S. EPA's approach to the regulation of greenhouse gases (GHGs) has been strikingly negative and aggressive. U.S. EPA's inappropriate regulation of GHGs has been calculated, swift, and decisive. The Climatic Research Unit's data and the endangerment finding have been challenged by several industry groups after evidence indicated that global temperature data had been manipulated. The legitimacy of the endangerment finding will be decided by the court system; until the courts decide or Congress takes action, the business community and the economy will continue to be paralyzed by U.S. EPA's GHG agenda.

**(b) Response**

The Cabinet acknowledges this comment. Please see the Response to Comment (1).

**(9) General Comment**

**(a) Comment** – The federal rule is endangering Kentucky businesses  
*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*  
*Chad Harpole, Kentucky Chamber of Commerce*

U.S. EPA's attempt to regulate greenhouse gases is yet another attack on industry in Kentucky. U.S. EPA's activities have taken place in direct contravention of a healthy federal-state relationship. The agency's overreaching has not been in concert, and often in conflict, with states' views. The Clean Air Act was never contemplated as a vehicle to regulate GHGs and is not suited for that purpose.

**(b) Response**

The Cabinet acknowledges this comment.

**(10) General Comment**

**(a) Comment** – The federal rule is endangering Kentucky businesses  
*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*

KAM is disappointed that the Cabinet chose to move forward with the adoption of the Tailoring Rule without providing aggressive feedback to EPA protesting the unwarranted imposition of the program on businesses and government within the Commonwealth. By the Cabinet moving forward at the current pace (following EPA's arbitrary, self-imposed deadline which is contrary to the Clean Air Act), Kentucky businesses are placed in the untenable position of being subject to a state requirement which is based upon a federal regulation that will likely be overturned.

**(b) Response**

The Cabinet does not concur. As discussed in the Response to Comment (1), the Cabinet submitted official comments to EPA on December 18, 2009, that addressed the legal, programmatic, and technical deficiencies of the Tailoring Rule. Also, please see the Response to Comment (1).

**(11) General Comment**

- (a) Comment** – Kentucky Association of Manufacturers does not oppose, but does not support, the Cabinet

*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*

KAM understands and appreciates the Cabinet's interest in maintaining primary authority for issuing permits in the state. The avoidance of a dual permitting program for Kentucky stationary sources is critical to the manufacturing community. To that end, KAM reluctantly does not oppose, but does not support, the Cabinet's adoption of the *Tailoring Rule* in 401 KAR 51:001 and 52:001.

**(b) Response**

The Cabinet acknowledges this comment.

**(12) General Comment**

- (a) Comment** – Only the *Tailoring Rule* amendments should be made.

*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*

The Regulatory Impact Analysis (RIA) for the proposed changes provides that the proposed amendments are being promulgated only to address changes necessary as a result of the *Tailoring Rule* should be promulgated by the Division. The Division has proposed many revisions not related to the *Tailoring Rule* that would substitute the current narrative definitions found at 401 KAR 51:001 and 52:001 to simply reference to the counterpart federal regulatory definition. In many instances, the wording is different and/or has been interpreted in a different manner. There appears to be substantive

differences between the current state and federal definitions of the terms: "major source", "building, structure, facility or installation", "major modification", "malfunction", "modification", and "visibility impairment." These changes are not necessary and should not be promulgated.

**(b) Response**

The Cabinet concurs in part. To clarify: the RIAs for the proposed administrative regulations clearly state in paragraph (2)(a), "This regulation is also being amended to conform to KRS Chapter 13A." Whenever a regulation is opened to make an amendment, KRS Chapter 13A mandates that the entire regulation be reviewed and amended to follow Chapter 13A drafting requirements. The revisions the commenter is referencing were made for this reason.

However, the Cabinet does concur that the majority of the definitions in the proposed administrative regulations should be returned to the original text with amendments that are necessary to address the Tailoring Rule provisions. Therefore, 401 KAR 51:001 and 52:001 have been amended to restore the original language for five (5) of the terms the commenter listed. The Cabinet has determined (with Legislative Research Commission guidance) that specific federal definitions, including the definition of "visibility impairment", are more appropriately cited to the CFR, and these regulations will retain the CFR citations.

**(13) 401 KAR 51:001  
Section 1(20)**

**(a) Comment** – The definition of "baseline actual emissions" causes problems  
*Chad Harpole, Director, Public Affairs, Kentucky Chamber of Commerce*

The incorporation of the federal definition of "baseline actual emissions" presents particular problems because the provisions of 40 C.F.R. 51.166(b)(47), related to fugitive emissions and "startup, shutdown and malfunction", are subject to a stay from April 1, 2010, through October 3, 2011, due to EPA's stay of the fugitive emission rules. Unless a regulation with a specific date is incorporated, there will be uncertainty as to the effectiveness of the fugitive emissions provisions.

**(b) Response**

The Cabinet concurs. In response to this and other comments, the Cabinet has restored the previous definition language for "baseline actual emissions" in 401 KAR 51:001. Also, please see the Response to Comment (6).

**(14) 401 KAR 51:001  
Section 1(75)**

- (a) **Comment** – The definition of “fixed capital cost” causes confusion  
*Chad Harpole, Director, Public Affairs, Kentucky Chamber of Commerce*

The incorporation of the federal definition of “fixed capital cost” is problematic. The federal definition at 40 C.F.R. 51.166(b)(55) was stayed indefinitely on December 24, 2004. The incorporation of a regulation that is stayed only serves to create confusion and should be avoided.

(b) **Response**

The Cabinet concurs. In response to this and other comments, the Cabinet has restored the previous definition language for “fixed capital cost” in 401 KAR 51:001 and 52:001. Also, please see the Response to Comment (6).

(15) **401 KAR 51:001**

**Section 1(80)(b) and (c)**

- (a) **Comment** – The *Fugitive Emissions Rule* has been stayed  
*Richard A. Schutt, Chief, Air Planning Branch, U.S. EPA*

On March 31, 2010, EPA stayed the *Fugitive Emissions Rule* until October 3, 2011, to allow the Agency time to propose, take comment, and issue a final action regarding the inclusion of fugitive emissions in new source review applicability determinations. Therefore, the 40 C.F.R. Part 51 and 52 administrative regulations that were amended for the *Fugitive Emissions Rule* are stayed through October 31, 2011. Pending final resolution of these issues, we will make a final determination on action regarding this portion of your SIP revision request.

(b) **Response**

The Cabinet acknowledges this comment. Please note that this issue has been resolved by restoring the definition for “fugitive emissions” to the original language in response to this and other comments. Please see Response to Comment (6).

(16) **401 KAR 51:001**

**Section 1(136)**

- (a) **Comment** – The “modification” definition amendment results in a substantial change  
*Chad Harpole, Director, Public Affairs, Kentucky Chamber of Commerce*

The incorporation of the NSPS definitions of “modification” results in a substantial change in the regulatory language of the current Kentucky definition and eliminates important language excluding certain actions from being classified as modifications, such as routine maintenance, repair and replacement. These changes are not addressed in the regulatory impact

analysis. The revisions should not be made unless these concerns are appropriately addressed.

**(b) Response**

The Cabinet concurs. In response to this and other comments, the Cabinet has restored the previous definition language for "modification" in 401 KAR 51:001 and 52:001. Also, please see the Response to Comment (12).

**(17) 401 KAR 51:001**

**Section 1(218)**

**(a) Comment** – The "significant" definition amendment does not include ozone depleting substances

*Chad Harpole, Director, Public Affairs, Kentucky Chamber of Commerce*

The proposed amendments revise 401 KAR 51:001 to incorporate the federal definition of "significant", which does not include a specific emission rate for ozone depleting substances. Both 401 KAR 51:017 and 51:052 specify a significant rate for ozone depleting substances. It appears the proposal could result in a significant increase for ozone depleting substances becoming "any emissions rate." The regulatory impact analysis does not address the impact of such a change. The Chamber believes thresholds for significance are an important way to avoid unnecessary regulation and should be maintained.

**(b) Response**

The Cabinet concurs. In response to this and other comments, the Cabinet has restored the previous definition language for "significant" in 401 KAR 51:001. Also, please see the Response to Comment (12).

**(18) 401 KAR 51:001**

**Regulatory impact analysis, (4)(b)**

**(a) Comment** – Best Achievable Control Technology and required emissions reductions are still unknown

*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*

*Chad Harpole, Kentucky Chamber of Commerce*

It is yet to be determined what Best Achievable Control Technology (BACT) for greenhouse gases (GHGs) will be. The regulatory impact analysis (RIA) for each proposal relies upon EPA's cost estimates but these estimates are questionable. EPA has provided no methodology or means to provide an estimate of emissions reductions or the costs of BACT controls. BACT for GHGs is unknown so that the cost of compliance for regulated entities is not known and this issue is not addressed in the RIA. Without estimates of emissions reductions or costs of BACT controls, it is questionable whether

the Cabinet can meet its statutory obligations under KRS Chapter 13A related to cost estimations.

**(b) Response**

To clarify: In paragraph (4)(b) of the RIA, the Cabinet does estimate the cost for individual companies to conduct a BACT analysis and submit the required permit application. The commenter is correct in noting that there are no established BACT requirements for GHGs. However, BACT controls will inevitably involve using energy efficiencies, which may result in low costs for compliance or potential savings. At this time there is no available cost analysis for BACT controls and GHG emission reductions. The Cabinet has addressed this deficiency with EPA in the Cabinet's December 18, 2009, comment letter on the Tailoring Rule and again in our September 29, 2010, comments on the proposed GHG SIP Call.

**(19) 401 KAR 51:001**

**Regulatory impact analysis, (4)(b)**

- (a) Comment** – The regulatory impact analysis should state that emission fee requirements will not apply to greenhouse gases or carbon dioxide equivalent

*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*  
*Chad Harpole, Kentucky Chamber of Commerce*

Please confirm that the emission fee requirements of 401 KAR 50:038 will not apply to greenhouse gas emissions or CO<sub>2</sub>e in the regulatory impact analysis.

**(b) Response**

The Cabinet concurs in part. In Phase I of the federal mandate, there are no additional emission fees associated with GHG emissions. However, sources which are brought under PSD or Title V permitting during Phases II and III of the federal mandate, solely because of GHG emissions, will be subject to Title V emission fees for particulate matter, SO<sub>2</sub>, NO<sub>x</sub>, and VOC emissions. There will continue to be no fees associated with GHG (CO<sub>2</sub>e) emissions during Phases II and III. However, the Cabinet concurs that the RIA for 401 KAR 51:001 should more clearly address this issue and has amended the RIA accordingly.

**(20) 401 KAR 52:001**

**Section 1(3)**

- (a) Comment** – The “actual emissions” definition should not be amended  
*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*

It is improper to incorporate the federal PSD definition of "actual emissions" for purposes of Kentucky's Title V program. No changes to this term are necessitated by the *Tailoring Rule* and the term should not be changed from its current definition.

**(b) Response**

The Cabinet concurs. In response to this and other comments, the Cabinet has restored the previous definition language for "actual emissions" in 401 KAR 51:001 and 52:001. Also, please see the Response to Comment (6).

**(21) 401 KAR 52:001**

**Section 1(51)**

**(a) Comment** – The "modification" definition results in a substantial change  
*Chad Harpole, Director, Public Affairs, Kentucky Chamber of Commerce*

The incorporation of the NSPS definitions of "modification" results in a substantial change in the regulatory language of the current Kentucky definition and eliminates important language excluding certain actions from being classified as modifications, such as routine maintenance, repair and replacement. These changes are not addressed in the regulatory impact analysis. The revisions should not be made unless these concerns are appropriately addressed.

**(b) Response**

The Cabinet concurs. In response to this and other comments, the Cabinet has restored the previous definition language for "modification" in 401 KAR 51:001 and 52:001. Also, please see the Response to Comment (12).

**(22) 401 KAR 52:001**

**Section 1(60)**

**(a) Comment** – Confirm that greenhouse gases and carbon dioxide equivalent are not regulated air pollutants  
*Chad Harpole, Director, Public Affairs, Kentucky Chamber of Commerce*

Please confirm that greenhouse gases or CO<sub>2</sub>e are not considered regulated air pollutants for 401 KAR Chapter 52, including evaluation of whether activities are classified as trivial or insignificant and for purposes of the requirements for state origin and registered sources.

**(b) Response**

The Cabinet concurs. GHGs are not considered "regulated air pollutants", by definition, for purposes of 401 KAR Chapter 52. The Cabinet followed the federal mandate by not amending the definition of "regulated air pollutant" to

include GHGs (CO<sub>2</sub>e). Like EPA, the Cabinet also added a definition for "subject to regulation" to bring major GHG (CO<sub>2</sub>e) sources and significant GHG modifications under PSD and Title V review. Therefore, GHG (CO<sub>2</sub>e) emissions are not subject to state origin permitting or registration or for evaluation as trivial and insignificant activities under 401 KAR Chapter 52 regulations.

**(23) 401 KAR 52:001**

**Section 1(60)**

- (a) Comment** – The Cabinet should confirm that greenhouse gases and carbon dioxide equivalent are not regulated air pollutants in the SOC and in the regulation

*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*

The Cabinet should confirm in the SOC, and specifically in the regulation, that greenhouse gases and/or CO<sub>2</sub>e would not be considered a "regulated air pollutant" as the term is defined at 401 KAR 52:001, Section 1(60), and thus, even after the currently proposed changes, would not be required to be considered when determining whether an activity meets the definition of "insignificant and trivial activities" at 401 KAR 52:020, Section 6.

**(b) Response**

The Cabinet concurs in part. The definition for regulated air pollutant has not been amended to include GHGs (CO<sub>2</sub>e); therefore, an additional amendment is not necessary. The Cabinet does concur that additional clarification is warranted in the RIA and has amended paragraph (2)(a) accordingly. Please see Response to Comment (22).

**(24) 401 KAR 52:001**

**Regulatory impact analysis, (4)(b)**

- (a) Comment** – The regulatory impact analysis should state that emission fee requirements will not apply to greenhouse gases or carbon dioxide equivalent

*Lloyd R. Cress, Jr., Kentucky Association of Manufacturers*

*Chad Harpole, Kentucky Chamber of Commerce*

Please confirm that the emission fee requirements of 401 KAR 50:038 will not apply to greenhouse gas emissions or CO<sub>2</sub>e in the regulatory impact analysis.

**(b) Response**

The Cabinet concurs in part. In Phase I of the federal mandate, there are no additional emission fees associated with GHG emissions. However, sources which are brought under PSD or Title V permitting during Phases II and III of

the federal mandate, solely because of GHG emissions, will be subject to Title V emission fees for particulate matter, SO<sub>2</sub>, NO<sub>x</sub>, and VOC emissions. There will continue to be no fees associated with GHG (CO<sub>2</sub>e) emissions during Phases II and III. However, the Cabinet concurs that the RIA for 401 KAR 52:001 should more clearly address this issue and has amended the RIA accordingly.

## Summary of Statement of Consideration

### *General Summary*

On August 24, 2010, the Cabinet conducted a public hearing to receive comments on the proposed administrative regulations listed below. This Statement of Consideration (SOC), filed with the Legislative Research Commission in accordance with the requirements of KRS Chapter 13A, relates to these administrative regulations.

401 KAR 51:001. Definitions for 401 KAR Chapter 51.

401 KAR 52:001. Definitions for 401 KAR Chapter 52.

The proposed administrative regulations were published in the August 1, 2010, issue of the *Administrative Register of Kentucky*.

This SOC presents a summary of all relevant comments submitted and the Cabinet's responses.

Prominent advertisement of the hearing was published at least thirty days prior to the hearing in accordance with KRS Chapter 13A. The Public Hearing Notice and copies of the proposed administrative regulations were distributed to individuals on the Cabinet's mailing list. Copies of the proposed administrative regulations were distributed to all division personnel, to members of the Environmental Quality Commission, and to other interested persons. Copies were also kept on file for public inspection in the Division's Regional Offices, select County Clerk's Offices, and the Louisville Metro Air Pollution Control District for at least thirty (30) days prior to the hearing.

### *Summary of Comments*

The Cabinet received **four (4)** written statements regarding the proposed administrative regulations prior to adjournment of the public comment period. No oral statements were received.

The written statements contained a total of **twenty-four (24)** comments, which included the following subjects:

- |   |            |
|---|------------|
| • Opinion of the Cabinet's actions                          | 1 comment  |
| • Supporting a FIP in the short term                        | 1 comment  |
| • Differences between implementation of regulatory programs | 1 comment  |
| • Inappropriate regulation of greenhouse gases              | 1 comment  |
| • Kentucky businesses are endangered                        | 2 comments |
| • The Cabinet should express opposition to EPA              | 1 comment  |
| • The possible need to withdraw amendments                  | 1 comment  |
| • The Cabinet should date federal regulations               | 1 comment  |
| • EPA should be engaged regarding biomass                   | 1 comment  |
| • Only <i>Tailoring Rule</i> amendments should be made      | 1 comment  |

- |  |            |
|--|------------|
| • 40 C.F.R. Part 60 should not be cited                                    | 1 comment  |
| • Stayed federal provisions should not be cited                            | 2 comments |
| • The <i>Fugitive Emissions Rule</i> has been stayed                       | 1 comment  |
| • Problems with amended definitions  | 4 comments |
| • BACT and required emissions reductions are unknown                       | 1 comment  |
| • State that emission fees will not apply to GHGs or CO <sub>2</sub> e     | 2 comments |
| • Confirm that GHGs and CO <sub>2</sub> e are not regulated air pollutants | 2 comments |

Action Taken by Promulgating Administrative Body

The Cabinet proposes the following amendments:

**401 KAR 51:001. Definitions for 401 KAR Chapter 51.**

Page 1

Section 1

Line 17

After "Definitions", insert the following:

The definitions with citations to the Code of Federal Regulations shall be governed by 40 C.F.R. Parts 50 through 96, effective July 1, 2010.

Page 1

Section 1(2)

Line 20

After "Actual emissions", insert the following:

(a) Means the actual rate of emissions of a regulated NSR pollutant from an emissions unit as determined according to the following:

1. Actual emissions as of a particular date equals the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four (24) month period, that precedes that date and is representative of normal source operation, unless a different time period is more representative of normal source operation; and

2. The unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time periods are used to calculate actual emissions;

(b) Means source-specific allowable emissions for the unit are equivalent to actual emissions of the unit if the cabinet has made an equivalency determination pursuant to 40 C.F.R. 51.166;

(c) Means, for an emissions unit that has not begun normal operations on a particular date, the potential to emit of the unit on that date; and

(d) Does not mean:

1. Calculating if a significant emissions increase has occurred; or

2. Establishing a PAL under 401 KAR 51:017, Section 20.

Delete the remainder of subsection (2).

Page 2

Section 1(3)

Line 1

After "or "PAL"", insert the following:

means a plant-wide applicability limit established for a major stationary source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

Delete the remainder of subsection (3).

**Page 2**

**Section 1(10)**

**Line 13**

After “allocation”, insert the following:

means the number of NOx allowances to be credited to a NOx budget unit.

Delete the remainder of subsection (10).

**Page 2**

**Section 1(12)**

**Lines 15 – 17**

After “Allowable emissions”, insert the following:

means:

(a) The emissions rate of a stationary source calculated using the maximum rated capacity of the source, unless the source is subject to federally enforceable limits that restrict the operating rate, hours of operation, or both, and the most stringent of the following:

1. The applicable standards codified in 40 C.F.R. Parts 60 and 61;

2. The applicable SIP emissions limitations, including those with a future compliance date; or

3. The emissions rates specified as a federally enforceable permit condition, including those with a future compliance date; or

(b) For an actuals PAL, the emissions rate of a stationary source calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit, and the most stringent provision of paragraph (a)1. through 3. of this subsection.

Delete the remainder of subsection (12).

**Page 3**

**Section 1(15)**

**Line 3**

After “Ambient air”, insert the following:

means that portion of the atmosphere, external to buildings, to which the general public has access.

Delete the remainder of subsection (15).

**Page 3**

**Section 1(20)**

**Line 11**

After “Baseline actual emissions”, insert the following:

means the rate of emissions, in tons per year, of a regulated NSR pollutant, that:

(a) For an existing electric utility steam generating unit (EUSGU), the unit actually emitted during any consecutive twenty-four (24) month

period selected by the owner or operator within the five (5) year period immediately proceeding the date the owner or operator begins actual construction of the project, unless a different twenty-four (24) hour time period is more representative of normal source operation.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period; and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph; and

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period allowed for each regulated NSR pollutant;

(b) For an existing emissions unit that is not an EUSGU, the unit actually emitted during any consecutive twenty-four (24) month period selected by the owner or operator within the ten (10) year period beginning on or after November 15, 1990, and immediately preceding the earlier of the date the owner or operator begins actual construction of the project or the date a complete permit application is received by the cabinet for a permit required under 401 KAR 51:017 or 51:052.

1. The rate is an average that:

a. Includes fugitive emissions, to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

b. Is adjusted downward:

(i) To exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four (24) month period;

(ii) To exclude any emissions that would have exceeded an emission limitation with which the major stationary source is required currently to comply, if the source had been required to comply with the limitations during the consecutive twenty-four (24) month period; and

(iii) For an emission limitation that is part of a maximum achievable control technology standard proposed or promulgated under 40 C.F.R. Part 63, only if the Commonwealth of Kentucky has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with 40 C.F.R. 51.165(a)(3)(ii)(G); and

c. Is based on any consecutive twenty-four (24) month period for which there is adequate information for determining annual emissions, in

tons per year, and for adjusting this amount as necessary according to clause b of this subparagraph.

2. If a project involves multiple emissions units, only one (1) consecutive twenty-four (24) month period is used for each regulated NSR pollutant to determine the baseline actual emissions for the emissions units being changed with a different consecutive twenty-four (24) month period;

(c) For a new emissions unit, equals zero for determining the emissions increase that will result from the initial construction and operation of the new unit and thereafter, for all other purposes, equals the unit's potential to emit; or

(d) For a PAL for a stationary source, is determined as follows:

1. For an existing EUSGU, in accordance with the procedures contained in paragraph (a) of this subsection;

2. For other existing emissions units, in accordance with the procedures contained in paragraph (b) of this subsection; and

3. For a new emissions unit, in accordance with the procedures contained in paragraph (c) of this subsection.

Delete the remainder of subsection (20).

Page 3  
Section 1(21)  
Line 12

After ““Baseline area””, insert the following:

means an intrastate area and every part of that area designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one (1)  $\mu\text{g}/\text{m}^3$  annual average of the pollutant for which the minor source baseline date is established.

(a) Area redesignations under 42 U.S.C. 7407(d)(1)(A)(ii) or (iii) do not intersect and are not smaller than the area of impact of a major stationary source or major modification that:

1. Establishes a minor source baseline date; or

2. Is subject to 401 KAR 51:017 and would be constructed in the Commonwealth of Kentucky.

(b) A baseline area established originally for total suspended particulate (TSP) increments remains in effect to determine the amount of available  $\text{PM}_{10}$  increments, unless the cabinet rescinds the corresponding minor source baseline date.

Delete the remainder of subsection (21).

Page 3  
Section 1(22)  
Line 13

After ““Baseline concentration””, insert the following:

means the ambient concentration level that exists in the baseline area on the date the applicable minor source baseline date is established.

Delete the remainder of subsection (22).

Page 4

Section 1(24)

Line 1

After ""Begin actual construction"", insert the following:

means:

(a) Initiation of physical on-site construction activities on an emissions unit that are of a permanent nature and include installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures; and

(b) For a change in method of operations, those on-site activities, other than the preparatory activities, that mark the initiation of the change.

Delete the remainder of subsection (24).

Page 4

Section 1(25)

Lines 2 – 3

After "or "BACT"", insert the following:

means an emissions limitation, including a visible emission standard, based on the maximum degree of reduction for each regulated NSR pollutant that will be emitted from a proposed major stationary source or major modification and:

(a) Is determined by the cabinet pursuant to 401 KAR 51:017, Section 8, after taking into account energy, environmental, and economic impacts and other costs, to be achievable by the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of that pollutant;

(b) Does not result in emissions of a pollutant that would exceed the emissions allowed by an applicable standard codified in 40 C.F.R. Parts 60 and 61; and

(c) Is satisfied by a design, equipment, work practice, or operational standard or combination of standards approved by the cabinet, if:

1. The cabinet determines pursuant to 40 C.F.R. 51.166(b)(12) that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible;

2. The standard establishes the emissions reduction achievable by implementation of the design, equipment, work practice, or operation; and

3. The standard provides for compliance by means that achieve equivalent results.

Delete the remainder of subsection (25).

**Page 4**  
**Section 1(27)**  
**Line 5**

After “Boiler”, insert the following:

means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Delete the remainder of subsection (27).

**Page 4**  
**Section 1(29)**  
**Line 7**

After “facility, or installation”, insert the following:

means all of the pollutant emitting activities that:

(a) Belong to the same industrial grouping or have the same two (2) digit major group code as described in the Standard Industrial Classification Manual;

(b) Are located on one (1) or more contiguous or adjacent properties;

(c) Are under the control of the same person or persons under common control; and

(d) Do not include the activities of a vessel.

Delete the remainder of subsection (29).

**Page 4**  
**Section 1(42)**  
**Line 22**

After “Combined cycle system”, insert the following:

means a system comprised of one (1) or more combustion turbines, heat recovery steam generators, or steam turbines configured to improve overall efficiency of electricity generation or steam production.

Delete the remainder of subsection (42).

**Page 4**  
**Section 1(43)**  
**Line 23**

After “Combustion turbine”, insert the following:

means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

Delete the remainder of subsection (43).

**Page 5**  
**Section 1(44)**  
**Lines 1 – 7**

After “Commence”, insert the following:

means that an owner or operator:

(a) Has undertaken a continuous program of construction, modification, or reconstruction of an affected facility, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction, modification, or reconstruction of an affected facility; or

(b) For construction of a major stationary source or major modification in the PSD or NSR program, has all necessary preconstruction approvals or permits, and:

1. Has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Has entered into binding agreements or contractual obligations, that cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Delete the remainder of subsection (44).

Page 5

Section 1(45)

Line 8

After ""Commence commercial operation"", insert the following:

means to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date remains the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered; or

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4, on the date the unit commences commercial operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of commercial operation.

Delete the remainder of subsection (45).

Page 5

Section 1(46)

Line 9

After ""Commence operation"", insert the following:

means, for a NOx budget unit, to have begun a mechanical, chemical, or electronic process, including start-up of a unit's combustion chamber. Except as provided in 401 KAR 51:195 or 40 C.F.R. 96.5:

(a) For a unit that is a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date remains the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered; or

(b) For a unit that is not a NOx budget unit under 40 C.F.R. 96.4 on the date of commencement of operation, the date the unit becomes a NOx budget unit under 40 C.F.R. 96.4 is the unit's date of commencement of operation.

Delete the remainder of subsection (46).

**Page 5**

**Section 1(50)**

**Lines 19 – 22**

After "(50)", insert the following:

"Construction" means:

(a) Fabrication, erection, installation, or modification of an air contaminant source; or

(b) For the NSR program, any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit that would result in a change in emissions at an air contaminant source.

Delete the remainder of subsection (50).

**Pages 5 – 6**

**Section 1(51)**

**Lines 23 – 2**

After "or "CEMS"", insert the following:

means all of the equipment necessary to meet the data acquisition and availability requirements of 401 KAR 51:017 or 51:052 to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Delete the remainder of subsection (51).

**Page 6**

**Section 1(52)**

**Lines 3 – 4**

After ""CEMS for NOx"", insert the following:

means the equipment required to sample, analyze, measure, and provide, by readings taken at least once every fifteen (15) minutes of the measured parameters, a permanent record of NOx emissions, expressed in tons per hour for NOx. The following systems are necessary component parts, as required by 40 C.F.R. Part 75, included in a continuous emissions monitoring system:

(a) Flow monitor;

(b) NOx pollutant concentration monitor;

(c) Diluent gas monitor (O<sub>2</sub> or CO<sub>2</sub>);

(d) Continuous moisture monitor; and

(e) Automated data acquisition and handling system.

Delete the remainder of subsection (52).

**Page 6**  
**Section 1(56)**  
**Line 14**

After “Control period”, insert the following:  
means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.  
Delete the remainder of subsection (56).

**Page 7**  
**Section 1(64)**  
**Lines 6 – 8**

After “Emissions unit”, insert the following:  
means any part of a stationary source, including an EUSGU, that emits or has the potential to emit a regulated NSR pollutant. For 401 KAR 51:017 and 51:052, there are two (2) types of emissions units:  
(a) A new emissions unit, which is any emissions unit that is or will be newly constructed and that has existed for less than two (2) years from the date the unit first operated; and  
(b) An existing emissions unit, which is any emissions unit that does not meet the requirements in paragraph (a) of this subsection or is a replacement unit.  
Delete the remainder of subsection (64).

**Page 7**  
**Section 1(66)**  
**Lines 17 – 18**

After “Equivalent method”, insert the following:  
means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet and the U.S. EPA pursuant to 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.  
Delete the remainder of subsection (66).

**Page 7**  
**Section 1(67)**  
**Line 19**

After “Excess NOx emissions”, insert the following:  
means any tonnage of nitrogen oxides emitted by a NOx budget unit during a control period that exceeds the NOx budget emissions limitation for the unit.  
Delete the remainder of subsection (67).

**Page 8**  
**Section 1(73)**  
**Lines 6 – 7**

After “Federally enforceable”, insert the following:

means all limitations and conditions that are enforceable by the U.S. EPA, including:

- (a) Requirements developed under 40 C.F.R. Parts 60 and 61;
- (b) Requirements in the Kentucky State Implementation Plan (SIP) approved by the U.S. EPA; and
- (c) Any permit requirements established under 40 C.F.R. 52.21 or under the Kentucky SIP approved pursuant to 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program incorporated into the SIP, that expressly requires adherence to a permit issued under the program.

Delete the remainder of subsection (73).

**Page 8**

**Section 1(74)**

**Line 8**

After "(74) "Federally", delete the hyphen.

**Page 8**

**Section 1(75)**

**Line 10**

After "'Fixed capital cost'", insert the following:

means the capital needed to provide all the depreciable components.

Delete the remainder of subsection (75).

**Page 8**

**Section 1(76)**

**Line 11**

After "'Fossil fuel'", insert the following:

means natural gas; petroleum; coal; or a form of solid, liquid, or gaseous fuel derived from natural gas, petroleum, or coal.

Delete the remainder of subsection (76).

**Page 8**

**Section 1(77)**

**Line 12**

After "'Fossil fuel fired'", insert the following:

means, for a unit:

(a) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel combusted comprises more than fifty (50) percent of the annual heat input on a BTU basis during a year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(b) The combustion of fossil fuel, alone or in combination with another fuel, if the fossil fuel is projected to comprise more than fifty (50) percent of the annual heat input on a BTU basis during a year, and the unit is to be

fossil fuel fired as of the date during the year the unit begins combusting fossil fuel.

Delete the remainder of subsection (77).

**Page 8**

**Section 1(80)**

**Lines 16 – 17**

After ““Fugitive emissions””, insert “means”.

Delete “: (a) Means”.

**Lines 18 – 20**

After “equivalent opening”, insert a period.

Delete the remainder of subsection (80).

**Page 9**

**Section 1(84)**

**Line 1**

After “Generator”, insert the following:

means a device that produces electricity.

Delete the remainder of subsection (84).

**Page 9**

**Section 1(87)**

**Lines 4 – 5**

After “Heat input”, insert the following:

means the product, in MMBTU per unit of time, of the gross calorific value of the fuel, in BTU per lb, and the fuel feed rate into a combustion device, in mass of fuel per unit of time, that:

(a) Does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources; and

(b) Is measured, recorded, and reported to the cabinet.

Delete the remainder of subsection (87).

**Page 10**

**Section 1(110)**

**Lines 20 – 21**

After “or “LAER””, insert the following:

means, for any source:

(a)1. The most stringent emissions limitation that is contained in the Kentucky SIP for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or

2. The most stringent emissions limitation achieved in practice by the class or category of stationary source;

(b) For a major modification, the lowest achievable emissions rate for the new or modified emissions units at the stationary source; and

(c) An emissions limitation that does not exceed the allowable emissions of an applicable standard established pursuant to 40 C.F.R. Parts 60, 61, or 63.

Delete the remainder of subsection (110).

**Page 11**  
**Section 1(113)**  
**Line 1**

After “Major emissions unit”, insert the following:  
means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of a PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Clean Air Act, 42 U.S.C. 7401-7671q for nonattainment areas.

Delete the remainder of subsection (113).

**Page 11**  
**Section 1(114)**  
**Lines 2 – 4**

After “Major modification”, insert the following:

means a physical change in or a change in the method of operation of a major stationary source that results in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant.

(a) A significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or nitrogen oxides is considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair, and replacement;

2. Use of alternative fuel or raw material by reason of an order or a natural gas curtailment plan in effect under a federal act;

3. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

4. Use of an alternative fuel or raw material by a stationary source that:

a. The source was capable of accommodating before January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052; unless the change would be prohibited by a federally enforceable permit condition that was established after January 6, 1975, for 401 KAR 51:017, or December 21, 1976, for 401 KAR 51:052, pursuant to 40 C.F.R. 51.165 or 51.166; or

b. The source is approved to use by a permit issued pursuant to 401 KAR 51:017 or 51:052;

5. An increase in the hours of operation or in the production rate, unless the change is prohibited by any federally enforceable permit condition established after January 6, 1975, for 401 KAR 51:017 or December 21, 1976, for 401 KAR 51:052 pursuant to 40 C.F.R. 52.21; after June 6, 1979, pursuant to 401 KAR 51:015; after September 22, 1982, pursuant to 401 KAR 51:017; or pursuant to 401 KAR 52:020 and 51:016E;

6. A change in ownership at a stationary source;

7. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with the Kentucky SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

8. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit of a regulated pollutant emitted by the unit, on a pollutant-by-pollutant basis; or

9. The reactivation of a very clean coal-fired electric utility steam generating unit.

(c) Instead of this definition, the definition for "PAL major modification", in subsection (175) of this section, is used for a particular regulated NSR pollutant, if the major stationary source is complying with the requirements of 401 KAR 51:017, Section 20, and 401 KAR 51:052, Section 11, for a PAL for that pollutant.

Delete the remainder of subsection (114).

**Page 11**

**Section 1(116)**

**Lines 7 – 8**

After "'Major source'", insert the following:

means a source with a potential emission rate equal to or greater than 100 tons per year of any one (1) of the following pollutants: particulate matter, sulfur oxides, nitrogen oxides, volatile organic compounds, carbon monoxide, or ODS.

Delete the remainder of subsection (116).

**Page 11**

**Section 1(117)**

**Line 9**

After "baseline date", insert the following:

means:

(a) For particulate matter and sulfur dioxide, January 6, 1975; and

(b) For nitrogen dioxide, February 8, 1988.

Delete the remainder of subsection (117).

After "(118)", insert the following:

"Major stationary source" means:

(a)1. A stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant, except that:

a. For ozone nonattainment areas: one hundred (100) tons per year or more of volatile organic compounds or nitrogen oxides in a marginal or moderate ozone nonattainment area; fifty (50) tons per year or more of volatile organic compounds or nitrogen oxides in a serious ozone nonattainment area; twenty-five (25) tons per year or more of volatile organic compounds or nitrogen oxides in a severe ozone nonattainment area; or ten (10) tons per year or more of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area;

b. Fifty (50) tons per year or more of carbon monoxide in a serious carbon monoxide nonattainment area where stationary sources contribute significantly to carbon monoxide levels; and

c. Seventy (70) tons per year or more of particulate matter (PM<sub>10</sub>) in a serious PM<sub>10</sub> nonattainment area; or

2.a. For the PSD program, any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant: fossil fuel-fired steam electric plants of more than 250 million BTU per hour heat input, coal cleaning plants with thermal dryers, kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140, fossil fuel boilers, or combination of fossil fuel boilers, totaling more than 250 million BTU per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants; and

b. Regardless of the stationary source size specified in subclause (i) of this clause, a stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

3. Any physical change that will occur at a stationary source not otherwise qualifying under this subsection as a major stationary source, if the change will constitute a major stationary source by itself;

(b) A source that is major for volatile organic compounds or nitrogen oxides is considered major for ozone; and

(c) Fugitive emissions are included only if the source belongs to one (1) of the following categories of stationary sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants (furnace process);
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants, except ethanol production facilities producing ethanol by natural fermentation under NAICS codes 325193 or 312140;
21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250 million BTUs per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour heat input; or
27. Another stationary source category that, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412.

Delete the remainder of subsection (118).

Page 11  
Section 1(119)  
Line 13

After "Malfunction", insert the following:

means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner

that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that is reasonably preventable.

Delete the remainder of subsection (119).

Page 11

Section 1(122)

Line 20

After "design heat input", insert the following:

means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

Delete the remainder of subsection (122).

Page 11

Section 1(123)

Line 21

After "hourly heat input", insert the following:

means an hourly heat input used for reporting purposes if a unit lacks certified monitors to report heat input and is:

(a) A value calculated according to 40 C.F.R. Part 75 using the maximum fuel flow rate and the maximum gross calorific value, if the unit intends to use 40 C.F.R. Part 75, Appendix D, to report heat input; or

(b) A value reported according to 40 C.F.R. Part 75 using the maximum potential flow rate and either the maximum percent CO<sub>2</sub> concentration (in percent CO<sub>2</sub>) or the minimum percent O<sub>2</sub>, if the unit intends to use a flow monitor and a diluent gas monitor.

Delete the remainder of subsection (123).

Page 11

Section 1(124)

Line 22

After "NO<sub>x</sub> emission rate", insert the following:

means the emission rate of NO<sub>x</sub> (in lb per MMBTU) calculated according to 40 C.F.R. Part 75, Appendix F, Section 3, using the maximum potential NO<sub>x</sub> concentration as defined in 40 C.F.R. Part 75, Appendix A, Section 2, and the maximum percent O<sub>2</sub> or the minimum percent CO<sub>2</sub> under all operating conditions of the unit except for unit startup, shutdown, and malfunction.

Delete the remainder of subsection (124).

Page 11

Section 1(125)

Line 23

After "hourly heat input", insert the following:

means a unit specific maximum hourly heat input (MMBTU) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

Delete the remainder of subsection (125).

Page 12

Section 1(130)

Line 10

After "'Minor source baseline date'", insert the following:

means:

(a) The earliest date after the trigger date on which a major stationary source or a major modification subject to permit requirements established pursuant to 40 C.F.R. 52.21 or the Kentucky SIP submits a complete application:

1. For particulate matter and sulfur dioxide, the trigger date is August 7, 1977; and

2. For nitrogen dioxide, the trigger date is February 8, 1988;

(b) For TSP increments, that the originally established date remains in effect to determine the amount of available PM<sub>10</sub> increments, unless the cabinet rescinds the minor source baseline date pursuant to 40 C.F.R. 51.166(b)(14)(iv); and

(c) A date established for each pollutant for which increments or other equivalent measures have been established if:

1. The area in which the proposed source or modification will construct is designated as attainment or unclassifiable pursuant to 42 U.S.C. 7407 (d)(1)(A)(ii) or (iii) for the pollutant on the date of its complete application pursuant to 401 KAR Chapter 52; and

2. For a major stationary source, the pollutant will be emitted in significant amounts or a significant net emissions increase of the pollutant will occur for a major modification.

Delete the remainder of subsection (130).

Page 12

Section 1(136)

Lines 18 - 20

After "(136)", insert the following:

"Modification" means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category considering available information;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility is considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, unless an emission control system is removed or replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

Delete the remainder of subsection (136).

**Page 13**

**Section 1(138)**

**Lines 1 – 2**

After "meets the requirements of", insert the following:

any applicable administrative regulation in 401 KAR Chapters 50 to 65.

Delete the remainder of subsection (138).

**Page 13**

**Section 1(141)**

**Line 5**

After "'Nameplate capacity'", insert the following:

means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time if not restricted by seasonal or other deratings as measured with United States Department of Energy standards.

Delete the remainder of subsection (141).

**Page 13**

**Section 1(143)**

**Lines 8 – 9**

After "approvals or permits", insert the following:

means those permits or approvals required under the administrative regulations approved to the Kentucky SIP pursuant to 40 C.F.R. 52.920, and federal air quality control laws and regulations established pursuant to 42 U.S.C. 7401-7671q.

Delete the remainder of subsection (143).

**Page 13**  
**Section 1(144)**  
**Line 10**

After "(144)", delete "(a)".  
After "means", insert ":       (a) For".  
Delete ", for".

**Page 14**  
**Section 1(144)(b)1.**  
**Line 2**

After "the change commences", delete the comma.

**Page 14**  
**Section 1(144)(b)2.**  
**Line 5**

After "the change commences", delete the comma.

**Page 15**  
**Section 1(146)**  
**Line 13**

After "test methods specified", insert "in the Kentucky SIP.".  
Delete the remainder of subsection (146).

**Page 15**  
**Section 1(153)**  
**Line 22**

After "Allowance Tracking System", insert """ or "NATS""".  
Delete "(NATS)".

**Page 17**  
**Section 1(164)**  
**Line 21**

After ""Opacity"", insert the following:  
means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.  
Delete the remainder of subsection (164).

**Page 18**  
**Section 1(169)**  
**Line 11**

After ""Owner or operator"", insert the following:  
means a person who owns, leases, operates, controls, or supervises an affected facility or a source of which an affected facility is a part.  
Delete the remainder of subsection (169).

**Page 18**

**Section 1(173)**

**Line 22**

After “PAL effective date”, insert the following:

means:

(a) The date of issuance of the PAL permit; or

(b) For an increased PAL, the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

Delete the remainder of subsection (173).

**Page 18**

**Section 1(174)**

**Line 23**

After “PAL effective period”, insert the following:

means the period beginning with the PAL effective date and ending ten (10) years later.

Delete the remainder of subsection (174).

**Page 19**

**Section 1(175)**

**Line 1**

After “PAL major modification”, insert the following:

means any physical change in or a change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

Delete the remainder of subsection (175).

**Page 19**

**Section 1(176)**

**Line 2**

After “PAL permit”, insert the following:

means the permit issued by the cabinet that establishes a PAL for a major stationary source.

Delete the remainder of subsection (176).

**Page 19**

**Section 1(177)**

**Line 3**

After “PAL pollutant”, insert the following:

means the pollutant for which a PAL is established at a major stationary source.

Delete the remainder of subsection (177).

**Page 19**

**Section 1(178)**

**Line 4**

After "“Particulate matter”", insert the following:

means a material, except uncombined water that exists in a finely divided form as a liquid or solid measured by a U.S. EPA-approved test method or a test method approved in the Kentucky SIP.

Delete the remainder of subsection (178).

**Page 19**

**Section 1(179)**

**Lines 5 – 6**

After "“Particulate matter emissions”", insert the following:

means, except as used in 40 C.F.R. Part 60, all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in 40 C.F.R. Chapter I, or by a test method specified in the Kentucky SIP.

Delete the remainder of subsection (179).

**Page 19**

**Section 1(185)**

**Line 19**

After "“PM<sub>10</sub>”", insert the following:

means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method in 40 C.F.R. Part 50, Appendix J, and designated in accordance with 40 C.F.R. Part 53, or by an equivalent method designated in accordance with 40 C.F.R. Part 53.

Delete the remainder of subsection (185).

**Page 20**

**Section 1(190)**

**Lines 9 – 20**

After "or “PTE”", insert the following:

means:

(a) The maximum capacity of a stationary source to emit a pollutant under its physical and operational design, in which:

1. A physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation is enforceable as a practical matter; and

2. This definition does not alter or affect the use of this term for other purposes of the Clean Air Act, 42 U.S.C. 7401-7671q, or the term "capacity factor" as used in the Acid Rain Program.

(b) For the PSD and NSR programs, the maximum capacity of a stationary source to emit a pollutant under its physical or operational design, in which:

1. A physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design if the limitation or the effect it would have on emissions:

a. Is federally enforceable; or

b. For an actuals PAL, is federally enforceable or enforceable as a practical matter; and

2. Secondary emissions are not counted.

Delete the remainder of subsection (190).

**Page 21**

**Section 1(197)**

**Lines 9 – 10.**

After "or "PSD Program"", insert the following:

means a major source preconstruction program that has been approved by the U.S. EPA and incorporated into the Kentucky SIP to implement the requirements of 40 C.F.R. 51.166 or 52.21.

Delete the remainder of subsection (197).

**Page 21**

**Section 1(198)**

**Line 11**

After ""Project"", insert the following:

means a physical change in or change in method of operation of an existing major stationary source.

Delete the remainder of subsection (198).

**Page 21**

**Section 1(199)**

**Line 12**

After ""Projected actual emissions"", insert the following:

means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one (1) of the five (5) years, in a twelve (12) month period, following the date the unit resumes regular operation after the project, or in any one (1) of the ten (10) years following that date, if:

1. The project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; and

2. Full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source; or

(b) The maximum annual rate, in tons per year, at which an emissions unit, before beginning actual construction, is projected to emit a regulated NSR pollutant, if the source:

1.a. Considers all relevant information, including historical operational data and the company's own representations of expected and highest projected business activity, filings with the cabinet and the U.S. EPA, and compliance plans under the Kentucky SIP;

b. Includes fugitive emissions and emissions associated with startups, shutdowns, and malfunctions; and

c. Excludes, in calculating any increase in emissions that results from a project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four (24) month period used to establish the baseline actual emissions and that are also unrelated to the project, including any increased utilization due to product demand growth; or

2. Elects to use the emissions unit's potential to emit, in tons per year, instead of using subparagraph 1 of this paragraph to determine projected actual emissions.

Delete the remainder of subsection (199).

Page 22  
Section 1(207)  
Line 10

After "Regulated NSR pollutant", insert the following:  
means the following:

(a) A pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the U.S. EPA;

(b) A pollutant subject to any standard promulgated under 42 U.S.C. 7411;

(c) A pollutant subject to a standard promulgated under or established by 42 U.S.C. 7671 to 7671q; or

(d) A pollutant that otherwise is subject to regulation, as defined in subsection (231) of this section, under 42 U.S.C. 7401 to 7671q, except that any hazardous air pollutant (HAP) listed in 42 U.S.C. 7412 or added to the list pursuant to 42 U.S.C. 7412(b)(2), that has not been delisted pursuant to 42 U.S.C. 7412(b)(3), is not a regulated NSR pollutant unless the listed HAP is also regulated as a constituent or precursor of a general pollutant listed under 42 U.S.C. 7408.

Delete the remainder of subsection (207).

Page 22  
Section 1(208)  
Line 11

After "Replacement unit", insert the following:

means an emissions unit that does not generate creditable emissions reductions by shutting down the existing emissions unit that is replaced, and that:

(a)1. Is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1) or that completely takes the place of an existing emissions unit;

2. Is identical to or functionally equivalent to the replaced emissions unit; and

3. Does not alter the basic design parameters of the process unit.

(b) Replaces a unit that:

1. Is permanently removed from the major stationary source, is otherwise permanently disabled, or is prohibited from operating by a permit that is enforceable as a practical matter; and

2. If brought back into operation, is considered a new emissions unit.

Delete the remainder of subsection (208).

**Page 22**

**Section 1(209)**

**Lines 12 – 13**

After "C.F.R. 51.166(b)(36).", delete the remainder of subsection (209).

**Page 22**

**Section 1(210)**

**Line 14**

After "'Responsible official'", insert the following:

means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly-authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 in second quarter 1980 dollars; or

2. The delegation of authority to the representative is approved in advance by the cabinet pursuant to this subsection;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. The principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency; or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

Delete the remainder of subsection (210).

Page 22  
Section 1(211)  
Line 15

After "Run", insert the following:

means the net period of time, either intermittent or continuous within the limits of good engineering practice, when an emission sample is collected.

Delete the remainder of subsection (211).

Page 22  
Section 1(214)  
Line 18

After "Secondary emissions", insert the following:

means emissions that:

(a) Occur as a result of the construction or operation of a major stationary source or major modification, and do not come from the major stationary source or major modification itself;

(b) Are specific, well defined, quantifiable, and impact the same general area as the stationary source modification that causes the secondary emissions;

(c) Include emissions from an offsite support facility that would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification; and

(d) Do not include emissions that come directly from a mobile source, including emissions from the tailpipe of a motor vehicle, a train, or vessel.

Delete the remainder of subsection (214).

Page 23  
Section 1(218)  
Lines 5 – 7

After "Significant", insert the following:

means:

(a) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

<u>POLLUTANT</u>	<u>EMISSIONS RATE</u>
<u>Carbon monoxide</u>	<u>100 tons per year (tpy)</u>
<u>Ozone depleting substance</u>	<u>100 tpy</u>
<u>Nitrogen oxides</u>	<u>40 tpy</u>
<u>Sulfur dioxide</u>	<u>40 tpy</u>

<u>Particulate matter</u>	<u>25 tpy of particulate matter emissions</u> <u>15 tpy of PM<sub>10</sub> emissions</u>
<u>Ozone</u>	<u>40 tpy of volatile organic compounds or nitrogen oxides</u>
<u>Lead</u>	<u>0.6 tpy</u>
<u>Fluorides</u>	<u>3 tpy</u>
<u>Sulfuric acid mist</u>	<u>7 tpy</u>
<u>Hydrogen sulfide (H<sub>2</sub>S)</u>	<u>10 tpy</u>
<u>Total reduced sulfur (including H<sub>2</sub>S)</u>	<u>10 tpy</u>
<u>Reduced sulfur compounds (including H<sub>2</sub>S)</u>	<u>10 tpy</u>
<u>Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)</u>	<u>3.2 x 10<sup>-6</sup> megagrams per year (Mg/y) (3.5 x 10<sup>-6</sup> tpy)</u>
<u>Municipal waste combustor metals (measured as particulate matter)</u>	<u>14 Mg/y (15 tpy)</u>
<u>Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)</u>	<u>36 Mg/y (40 tpy)</u>
<u>Municipal solid waste landfill emissions (measured as nonmethane organic compounds)</u>	<u>35 Mg/y (50 tpy)</u>

(b) For 401 KAR 51:017, in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that is not listed in the table in paragraph (a) of this subsection, any emissions rate;

(c) For 401 KAR 51:017, in reference to an emissions rate or a net emissions increase associated with a major stationary source or major modification, that is to be constructed within ten (10) kilometers of a Class

l area, an impact on that area equal to or greater than one (1)  $\mu\text{g}/\text{m}^3$  over a twenty-four (24) hour average;

(d) For 401 KAR 51:052, in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in the following table, a rate of emissions that would equal or exceed a corresponding rate listed in the table:

<u>POLLUTANT</u>	<u>EMISSIONS RATE</u>
<u>Carbon monoxide</u>	<u>100 tons per year (tpy)</u>
<u>Ozone depleting substance</u>	<u>100 tpy</u>
<u>Nitrogen oxides</u>	<u>40 tpy</u>
<u>Sulfur dioxide</u>	<u>40 tpy</u>
<u>Ozone</u>	<u>40 tpy of volatile organic compounds or nitrogen oxides</u>
<u>Lead</u>	<u>0.6 tpy</u>

(e) For 401 KAR 51:052, with the exception of the significant emissions rate for ozone in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions that exceeds the following:

1. Twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides in a serious or severe ozone nonattainment area; or
2. Any increase in actual emissions of volatile organic compounds or nitrogen oxides in an extreme ozone nonattainment area; or

(f) For 401 KAR 51:052, with the exception of the significant emissions rate for carbon monoxide in this subsection, significant means, in reference to an emissions increase or net emissions increase, a rate of emissions of carbon monoxide that equals or exceeds fifty (50) tons per year in a serious nonattainment area for carbon monoxide in which a stationary source contributes significantly to carbon monoxide levels.

Delete the remainder of subsection (218).

Page 23  
Section 1(219)  
Lines 8 – 10

After ““Significant emissions increase””, insert the following:  
means, for a regulated NSR pollutant, an increase in emissions that is equal to or greater than the emission level that is significant for that pollutant.

Delete the remainder of subsection (219).

Page 23  
Section 1(220)  
Lines 11 – 13

After ““Significant emissions unit””, insert the following:

means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount equal to or greater than the applicable significant level as defined in subsection (218) of this section or in 42 U.S.C. 7401 to 7671q, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

Delete the remainder of subsection (220).

**Page 23**

**Section 1(221)**

**Lines 14 – 16**

After ““Small emissions unit””, insert the following:

means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the PAL pollutant's applicable significant level as defined in subsection (218) of this section; or in 42 U.S.C. 7401 to 7671q, whichever is lower.

Delete the remainder of subsection (221).

**Page 24**

**Section 1(227)(a)**

**Line 6**

After "in. of Hg)", insert "; or".

Delete the period.

**Page 24**

**Section 1(230)**

**Line 12**

After ““Stationary source””, insert the following:

means a building, structure, facility, or installation that emits or has the potential to emit a regulated NSR pollutant.

Delete the remainder of subsection (230).

**Page 24**

**Section 1(231)**

**Lines 13 – 14**

After “C.F.R. 51.166(b)(48)”, delete the following:  
“for the PSD and NSR programs”.

**Page 24**

**Section 1(235)**

**Line 20**

After “or “tonnage””, insert a comma.

After “NOx budget source”, insert the following:

, means a short ton or 2,000 pounds. For determining compliance with the NOx budget emissions limitation, total tons for a control period is calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with 40

C.F.R. Part 96, Subpart H with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one (1) ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

Delete the remainder of subsection (235).

**Page 24**

**Section 1(236)**

**Line 21**

After "or "TSP"", insert the following:

means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

Delete the remainder of subsection (236).

**Page 25**

**Section 1(240)**

**Line 4**

After ""Unit"", insert the following:

means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

Delete the remainder of subsection (240).

**Page 80**

**Section 2**

**Line 1**

After "(1)", insert the following:

"North American Industry Classification System", 2007, as published by the Office of Management and Budget is incorporated by reference.

(2)

**Line 4**

Insert "(3)".

Delete "(2)".

**Page 80**

**Section 2(2)(e)**

**Lines 15 and 16**

After "Regional Office,", insert the following:

200 Fair Oaks Lane, Third Floor, Frankfort, Kentucky 40601, (502) 564-3358;

Delete the remainder of paragraph (e).

**Page 81**

**Section 2**

**Line 3**

Insert "(4)".

Delete "(3)".

**401 KAR 52:001. Definitions for 401 KAR Chapter 52.**

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Lines 11 and 12**

After "of air pollution.", delete the following:

There is no federal mandate for this administrative regulation.

**Page 1**

**Section 1**

**Line 16**

After "Definitions", insert the following:

The definitions with citations to the Code of Federal Regulations shall be governed by 40 C.F.R. Parts 50 through 96, effective July 1, 2010.

**Page 2**

**Section 1(3)**

**Line 1**

After "'Actual emissions'", insert the following:

means the quantity of an air pollutant that is physically emitted into the ambient air during a specified time period.

Delete the remainder of subsection (3).

**Page 2**

**Section 1(11)**

**Line 17**

After "device", insert a comma.

**Page 3**

**Section 1(13)**

**Line 3**

After "'Ambient air'", insert the following:

means that portion of the atmosphere, external to buildings, to which the general public has access.

Delete the remainder of subsection (13).

**Page 3**

**Section 1(20)**

**Line 21**

After "installation", insert a comma.

**Page 6**

**Section 1(32)**

**Line 8 – 9**

After "'Equivalent method'", insert the following:

means a method of sampling and analyzing for an air pollutant that has been demonstrated to the cabinet and the U.S. EPA pursuant to 40 C.F.R. 53.3 to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

Delete the remainder of subsection (32).

**Page 6**

**Section 1(34)(b)**

**Lines 22 – 23**

After "issued pursuant to", insert the following:

an applicable administrative regulation in 401 KAR Chapters 50 to 65

Delete "administrative regulations"

**Page 9**

**Section 1(45)**

**Lines 22 – 23**

After "'Major source'", insert the following:

means a stationary source or a group of stationary sources that emits or has a potential to emit a pollutant that is subject to regulation at or above a major source threshold and:

(a) For HAPs:

1. Is located within a contiguous area;

2. Is under common control;

3. Includes all fugitive HAP emissions in determining if the source is major; and

4. Even if the units are in a contiguous area under common control, emissions are not aggregated with emissions from other similar units to determine major source status for:

a. Oil or gas exploration or production wells and the associated equipment; or

b. Pipeline compressors or pump stations; and

(b) For regulated air pollutants other than HAPs:

1. Is located on one (1) or more contiguous or adjacent properties;

2. Is under common control;

3. Belongs to a single major industrial grouping where all of the pollutant emitting activities belong to the same major group (i.e., all have the same two (2) digit code) as described in the 1987 Standard Industrial Classification (SIC) Manual; and

4. Fugitive emissions are considered in determining if the source is major if it belongs to a category listed in this clause:

a. Coal cleaning plants (with thermal dryers);

b. Kraft pulp mills;

c. Portland cement plants;

d. Primary zinc smelters;

e. Iron and steel mills;

f. Primary aluminum ore reduction plants;

- g. Primary copper smelters;
- h. Municipal incinerators capable of charging more than 250 tons of refuse per day;
- i. Hydrofluoric, sulfuric, or nitric acid plants;
- j. Petroleum refineries;
- k. Lime plants;
- l. Phosphate rock processing plants;
- m. Coke oven batteries;
- n. Sulfur recovery plants;
- o. Carbon black plants (furnace process);
- p. Primary lead smelters;
- q. Fuel conversion plants;
- r. Sintering plants;
- s. Secondary metal production plants;
- t. Chemical process plants;
- u. Fossil-fuel boilers (or a combination thereof) totaling more than 250 million BTU per hour heat input;
- v. Petroleum storage and transfer units with a total storage capacity of more than 300,000 barrels;
- w. Taconite ore processing plants;
- x. Glass fiber processing plants;
- y. Charcoal production plants;
- z. Fossil-fuel-fired steam electric plants of more than 250 million BTU per hour of heat input; or
- aa. All other stationary source categories subject to a standard promulgated pursuant to 42 U.S.C. 7411 or 42 U.S.C. 7412 and for which the U.S. EPA has made an affirmative determination pursuant to 42 U.S.C. 7602(j).

Delete the remainder of subsection (45).

Page 12

Section 1(46)(a)3.

Line 10

After "in a final rulemaking," delete "or".

Page 12

Section 1(46)(b)3.

Line 23

After "classified as serious", insert the following:

; or

(c) A quantity established by the U.S. EPA in a final rulemaking for a pollutant that is subject to regulation

Page 13

Section 1(47)

Line 1

After "Malfunction", insert the following:

means a sudden and infrequent failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner that is not caused entirely or in part by poor maintenance, careless operation, or other upset condition or equipment breakdown that could have been reasonably prevented.

Delete the remainder of subsection (47).

**Page 13**

**Section 1(51)**

**Lines 14 – 16**

After "(51)", delete "(a)".

After "Modification", insert the following:

means any physical change in, or a change in the method of operation of, an affected facility that:

(a) Increases the amount of any regulated air pollutant emitted into the atmosphere by that facility, or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted; and

(b) Is not solely:

1. Maintenance, repair, and replacement that the cabinet determines to be routine for a source category considering available information;

2. An increase in production rate of an affected facility, if that increase can be accomplished without a capital expenditure on that facility;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date a standard becomes applicable to that source type, the affected facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change;

5. Conversion to coal required for energy considerations, as specified in 42 U.S.C. 7411(a)(8);

6. The addition or use of a system or device the primary function of which is the reduction of air pollutants, except if an emission control system is removed or is replaced by a system that the cabinet determines to be less environmentally beneficial; or

7. The relocation or change in ownership of a source.

Delete the remainder of subsection (51).

**Page 14**

**Section 1(53)**

**Line 19**

After "Opacity", insert the following:

means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Delete the remainder of subsection (53).

**Page 14**  
**Section 1(54)**  
**Line 21**

After ""Owner or operator"", insert the following:

means a person who owns, leases, operates, controls, or supervises an affected facility or a source of which an affected facility is a part.

Delete the remainder of subsection (54).

**Page 15**  
**Section 1(56)(b)**  
**Line 10**

After "(b)", insert "Use".

Delete the following:

This definition does not alter or affect the use

**Line 11**

After "the Act or", insert "for".

After "Acid Rain Program", insert "is not altered".

**Page 16**  
**Section 1(60)(e)**  
**Line 10**

After "42 U.S.C. 7411;", insert "or".

**Page 16**  
**Section 1(62)**  
**Line 15**

After ""Responsible official"", insert the following:

means:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of that person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit; and

1. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars); or

2. The delegation of authority to the representative is approved by the cabinet in advance pursuant to this subsection;

(b) For a partnership or sole proprietorship, a general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency, a principal executive officer or ranking elected official. For this administrative regulation, the principal executive officer of a federal agency includes the

chief executive officer having responsibility for the overall operation of a principal geographic unit of the agency (e.g., a regional administrator of the U.S. EPA); or

(d) For the acid rain portion of a permit for an affected source, the designated representative.

Delete the remainder of subsection (62).

**Page 18**

**Section 1(71)**

**Line 12**

After "regulated air pollutant", insert the following:

or an air pollutant subject to regulation pursuant to 40 C.F.R. 70.2

**Page 18**

**Section 1(75)**

**Lines 20 – 21**

After "or "TSP"", insert the following:

means particulate matter as measured by the method described in 40 C.F.R. Part 50, Appendix B.

Delete the remainder of subsection (75).

**Page 19**

**Section 1(79)**

**Line 6**

After "gears, or axles", insert "that".

Delete "which".